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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,311

03/22/2004

Matthew F. Ogle

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DARDI & ASSOCIATES, PLLC

220 S. 6TH ST.

SUITE 2000, U.S. BANK PLAZA

MINNEAPOLIS, MN 55402

EXAMINER

NGUYEN, VI X

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

02/25/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,311	<b>Applicant(s)</b> OGLE, MATTHEW F.	
	<b>Examiner</b> Victor X. Nguyen	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. None of the drawings of Applicant (submitted dated 3/22/04) illustrates *a reference number for surface capillaries*.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,5-10,12-14 and 21-29 are rejected under 35 U.S.C. 102 (b) as being anticipated by Purdy (U.S.5,693,067).

Purdy discloses in figures 7,10, 11, an embolism protection device having the limitations of the above listed claims, including: a plurality of fibers 108 which has surface capillaries and are bound within a structure which has a deployed configuration that fills the lumen of a vessel having a diameter corresponding to the human vessel, where the fibers are within a fabric (see col. 7, lines 33-35), where the fibers are curled (the curled locates at the tip of element 110) and are in a bundle at best seen in figs. 10,11, and where the device further comprises a tether which is a guidewire 4, and where the device is capable to attach to the tether with an adhesive (see col. 8, lines 36-45). It is noted that col. 6, lines 17-31, the fibers of Purdy can be grafted with other polymer, for-example, a hydrogel.

Claims 1,5,9-10,13-14 and 21-29 are rejected under 35 U.S.C. 102 (e) as being anticipated by Macoviak et al. (U.S.6,395,014).

Macoviak discloses in figure 1, an embolism protection device having the limitations of the above listed claims, including: a plurality of fibers 112 which has surface capillaries and are bound within a structure which has a deployed configuration that fills the lumen of a vessel having a diameter corresponding to the human vessel, where the fibers are within a fabric (see col. 5, lines 28-38), where the device further comprises a tether which is a guidewire 104, and where the device is capable to attach to the tether with an adhesive at best seen in fig. 1.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 11 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Purdy (U.S. 5,693,067).

Purdy discloses the invention substantially as claimed. However, Purdy is silent regarding the fibers comprises a hydrophilic polymer, polyester, or a bioresorbable polymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the fibers comprises a hydrophilic polymer, polyester, or a bioresorbable polymer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use or as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Regarding to claim 11, Purdy is silent regarding the structure has an effective pore size to trap emboli with a diameter larger than 0.2 mm while a majority of particulates with a diameter smaller than 0.001 mm pass. Nevertheless, Purdy does disclose an embolism device that has a structure with an effective pore size, where changes in the size of a component involve merely routine skill in the art. Applicant has not disclosed that such an expansion diameter of the device is to solve a particular problem or is for any stated purpose and it appears that other expansion diameter of the device would work equally well in embolism protection device. Therefore, it would have been obvious to one of ordinary skill

in the art at the time the invention was made to make Purdy's device with a structure that has a diameter of at least 0.2 millimeters, which allows the particulates with a diameter of no more than about 0.001 millimeters to flow through the device.

### ***Response to Arguments***

4. Applicant's arguments filed 11/16/2007 have been fully considered but they are not persuasive. The applicant argues that Purdy reference fails to teach fibers having surface capillaries. The examiner, respectfully, disagrees. Purdy does disclose a plurality of fibers 108 as claimed. For example, Purdy discloses, in col. 6, lines 25-30, some materials that are inherently porous. Thus, the fibers would have the characteristic of surface capillaries. Furthermore, the surface capillaries are not further defined by the applicant. Because there is no further description of the fibers, the examiner considers element 108 as fibers having pores or surface capillaries. These fibers of Purdy can have a size suitable for placement within the vessel wall. Accordingly, the above noted reference is still considered to read on the claimed limitations of the claims note. Finally, Applicant has not mentioned any other deficiencies in the Examiner's original rejection claims 1,5,13,14,28-29 by Macoviak, therefore, the rejections 102 (e) by Macoviak are considered valid.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ho Jackie can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734

VN  
2/17/2008

/Julian W. Woo/  
Primary Examiner, Art Unit 3773